

1 **I. BACKGROUND**

2 Defendant Rick Rizzolo owned and operated a strip club, the Crazy Horse Too,
3 through a closely held corporation, The Power Company, Inc. (Pls.' Opp'n to Mot. Summ.
4 J. [Doc. #489] ("Opp'n"), Ex. 3 at 98.) As early as the 1980s, both Rick Rizzolo and his
5 wife, Defendant Lisa Rizzolo, were aware that Rick Rizzolo's reputed ties to organized
6 crime had become a subject of interest to the Federal Bureau of Investigation ("FBI").
7 (Opp'n, Ex. 3 at 88-90, Ex. 4 at 79.)

8 In May 2001, the Rizzolos consulted an attorney, John Dawson ("Dawson"), for
9 estate planning and asset protection advice. (Opp'n, Exs. 1, 2.) Along with other advice,
10 Dawson recommended to Rick Rizzolo that he establish an offshore trust in the Cook
11 Islands, and that this trust hold an Oppenheimer account. (Opp'n, Ex. 2.) According to
12 Dawson's letter to Rick Rizzolo, the "advantage of this is, that in the event a U.S. Judge
13 froze any of your assets, the funds in the Oppenheimer Account would be totally protected
14 and would not be subject to being frozen." (Id.) Based on Dawson's advice, the Rizzolos
15 formed several trusts and business entities. (Opp'n, Exs. 1, 2.)

16 In September 2001, Plaintiff Kirk Henry was injured at the Crazy Horse Too and
17 rendered a quadriplegic. (Opp'n, Ex. 7; Def.'s Reply [Doc. #501], Ex. I.) Following Kirk
18 Henry's injury, the Henrys sued Rick Rizzolo and The Power Company in Nevada state
19 court in October 2001. (Opp'n, Ex. 7.)

20 In early 2003, the Las Vegas Metropolitan Police Department conducted a search
21 at the Crazy Horse Too. (Opp'n, Ex. 3 at 93.) A few weeks later, the FBI and the Internal
22 Revenue Service ("IRS") conducted a raid on the club and removed records, cash registers,
23 and credit card machines. (Id. at 93-94.)

24 On May 24, 2005, Defendants Lisa and Rick Rizzolo filed a Joint Petition for
25 Summary Decree of Divorce. (Opp'n, Ex. 5.) The Joint Petition divided Rick and Lisa
26 Rizzolo's community property, giving Rick Rizzolo one hundred percent ownership in The

1 Power Company, a Corvette, the interest in a Philadelphia club, and the personal property in
2 his possession, such as clothing and jewelry. (Id.) Lisa Rizzolo was to receive a house in
3 Newport Beach, a house in Las Vegas, a condominium in Chicago, Oppenheimer accounts
4 totaling \$7.2 million as of that date, three vehicles, and the personal property in her
5 possession, such as clothing and jewelry. (Id.)

6 As to the value of The Power Company, doing business as the Crazy Horse Too,
7 the Joint Petition, states:

8 The Petitioners agree that the value of the community business is
9 speculative. The parties also understand that there may be potential
10 debts assessed against the community business in the future,
11 specifically but not limited to a civil suit Henry v Powerhouse
12 Company Case No. A440740, potential criminal fines, tax impositions
13 both current and in the future and any and all current and future debts
14 which may be incurred. The Parties have agreed that Petitioner,
15 Fredrick Rizzolo will be responsible for any and all debts and
16 impositions of fines and or liens against the community business and
17 against himself personally, and hold Lisa Rizzolo completely harmless
18 from all such debts.

15 (Id.) In addition to this property division, Rick Rizzolo was to pay Lisa Rizzolo spousal
16 support in the amount of \$83,333 per month for five years. (Id.) The Rizzolo's divorce
17 decree was entered in early June 2005, and it incorporated the Joint Petition's terms.
18 (Opp'n, Ex. 6.)

19 After the Rizzolos divorced, the Henrys entered into a settlement with Rick
20 Rizzolo and The Power Company and released their claims in the state court personal injury
21 action in July 2006. (Def.'s Mot. Summ. J., Ex. 1; Opp'n, Ex. 7.) The release of claims in
22 the state court personal injury action was done in conjunction with plea agreements entered
23 in June 2006 in criminal cases brought in federal court against Rick Rizzolo, The Power
24 Company, and various other individuals, alleging racketeering activity and tax fraud.
25 (United States v. The Power Company, Inc., 2:06-CR-00186-PMP-PAL.) Pursuant to the
26 plea agreements and the release of claims in the state civil action, The Power Company and

1 Rick Rizzolo were to pay the Henrys a total of \$10 million, with the first million to be paid
2 at the time of the entry of plea. (Doc. #7 & #8 in 2:06-CR-00186-PMP-PAL; Def.'s Mot.
3 Summ. J., Ex. 1.) The remaining \$9 million would be due upon the sale of the Crazy Horse
4 Too. (Doc. #7 & #8 in 2:06-CR-00186-PMP-PAL; Def.'s Mot. Summ. J., Ex. 1.) The
5 release of claims in the state court action made clear that "[a]lthough it is anticipated that
6 the NINE-MILLION DOLLARS (\$9,000,000.00) will be paid from the proceeds of the
7 sale, the obligation to make said payment upon the closing is not contingent upon the
8 realization of net proceeds from the sale sufficient to make the NINE-MILLION
9 DOLLARS (\$9,000,000.00) payment." (Opp'n, Ex. 7.) At the time the Henrys entered into
10 the settlement agreement, they were aware of the divorce decree in the Rizzolos' divorce
11 proceeding and that the divorce decree incorporated the Joint Petition's division of the
12 Rizzolos' community property. (Def.'s Mot. Summ. J., Ex. 1.)

13 Pursuant to the plea agreement, Rick Rizzolo had one year to divest himself of
14 any interest in the Crazy Horse Too and all other similar businesses. (Doc. #8 in 2:CR-
15 00186-PMP-PAL.) Rick Rizzolo did not sell the Crazy Horse Too in that one-year time
16 frame. Instead, in August 2007, the United States moved for the Court to substitute the
17 Crazy Horse Too for over \$4 million that Rick Rizzolo had agreed to forfeit to the United
18 States in his plea agreement. (Ex Parte Mot. for Ct. to Authorize the Substitution, the
19 Forfeiture, and the Sale of the Substitute Assets and the Distribution of the Sale Proceeds
20 (Doc. #58 in 2:06-CR-00186-PMP-PAL).) The Court granted that motion, and the Crazy
21 Horse too was forfeited to the United States. (Mins. of Proceedings (Doc. #60).)

22 Pursuant to federal forfeiture law, various parties made claims for their interests
23 in the forfeited property, including the Henrys. (Pet. & Settlement Agreement, Stip. for
24 Entry of Order of Forfeiture, & Order (Doc. #68).) The Court resolved all petitions
25 claiming an interest in the property and set the order of priority of these claims in the First
26 Amended Order of Forfeiture in June 2008. (First Am. Order of Forfeiture (Doc. #222 in

1 2:CR-00186-PMP-PAL); see also Second Am. Order of Forfeiture (Doc. #242) in 2:06-CR-
2 00186-PMP-PAL.) In the meantime, the United States was unable to sell the Crazy Horse
3 Too. The liquor and exotic dance licenses on the property lapsed at the end of June 2008.
4 The Crazy Horse Too remained unsold until the first priority lienholder foreclosed and the
5 property was sold at auction on July 1, 2011. (Notice of Trustee's Sale (Doc. #446 in 2:CR-
6 00186-PMP-PAL).)

7 While the sale of the Crazy Horse Too languished, the Rizzolos engaged in
8 transfers between each other and with third parties. After their divorce, Lisa Rizzolo loaned
9 Rick Rizzolo \$600,000. (Opp'n, Ex. 3 at 158-59.) In April 2008, Rick Rizzolo received \$1
10 million for the sale of his interest in the Philadelphia club. (Opp'n, Ex. 3 at 124-49; Order
11 (Doc. #437) at 6.) He deposited that money in a Cook Islands account. (Opp'n, Ex. 3 at
12 152.) Very shortly thereafter, he distributed nearly all the funds, including \$600,000 to Lisa
13 Rizzolo for repayment of a loan, \$200,000 to Rick Rizzolo's father for repayment of taxes
14 paid, \$100,000 to the law firm Patti & Sgro for legal services, and approximately \$80,000 to
15 Dawson for legal services. (Id. at 153-65.) In addition to the initial \$1 million, Rick
16 Rizzolo, through Lions Limited Partnership, was entitled to another \$2 million from this
17 sale to be paid out over time. (Opp'n, Ex. 8.)

18 During discovery in this case, the Magistrate Judge concluded that—

19 Defendant Rick Rizzolo's discovery responses in December 2008 and
20 April 2009 regarding his interests in testamentary or inter vivos trusts
21 were clearly deceptive. At the time of these responses, Mr. Rizzolo
22 must have known of the existence of the RLR Trust and that he had
23 transferred \$990,000 into the RLR Trust's bank account in April 2008,
which shortly thereafter was withdrawn at his request to pay his
attorneys fees, to repay loans from Lisa Rizzolo and her trust, to repay
a loan from his father, and to cover Mr. Rizzolo's living expenses.

24 (Order (Doc. #437) at 9.) The Magistrate Judge further stated that the "trier of fact may
25 conclude that Mr. Rizzolo's false or deceptive answers to interrogatories demonstrate an
26 ongoing intent to conceal his assets or the disposition of those assets." (Id. at 9 n.3.)

1 In addition to these transfers, although Rick Rizzolo owed Lisa Rizzolo over \$83,000 per
2 month in spousal support, she made no effort to collect on it prior to her deposition in this
3 case in May 2009. (Opp'n, Ex. 4 at 145-48.)

4 Defendants now move for summary judgment on Plaintiffs' NUFTA claim,¹
5 arguing that Plaintiffs are attempting to plead a conspiracy to violate NUFTA, but that no
6 such claim exists under Nevada law, and, in any event, Plaintiffs fail to plead necessary
7 elements of a conspiracy. Defendants also argue that no genuine issue of material fact
8 remains that their divorce was not fraudulent because Rick Rizzolo received the Crazy
9 Horse Too, which at the time was a substantially greater valued asset than the remainder of
10 the Rizzolo community property which Lisa Rizzolo received. Defendants further contend
11 that the Henrys entered into the settlement agreement with full knowledge of Defendants'
12 divorce and division of assets, and of the fact that Rick Rizzolo had no assets other than the
13 Crazy Horse Too, and thus the divorce could not be a fraudulent conveyance as to the
14 Henrys.

15 The Henrys respond that the Court should deny the motion for failure to comply
16 with Local Rule 56-1, because Defendants do not provide a concise statement of material
17 facts indicating what facts are or are not in dispute, and citing to relevant evidence in
18 support. On the merits, the Henrys argue genuine issues of material fact remain with
19 respect to their NUFTA claim. Specifically, the Henrys note that Defendants' motion
20 focuses only on the divorce, but the Henrys allege other fraudulent transfers. The Henrys
21 thus argue that even if partial summary judgment is appropriate on the divorce, the overall
22 claim must survive. As to the divorce, the Henrys argue that genuine issues of fact remain,
23 such as the actual value of the Crazy Horse Too, which the Rizzolos' own divorce decree
24

25 ¹ Defendants also move for summary judgment on counts one and two of Plaintiffs' Second
26 Amended Complaint, but the Court previously granted Plaintiffs' motion to voluntarily dismiss these
claims. (Order (Doc. #533).) The Court therefore will deny this portion of Defendants' motion as
moot.

1 stated was speculative, and, in any event, the value of property is an issue of fact as a
 2 general matter. The Henrys further argue that the nature of the sham divorce is evidenced
 3 by the Rizzolos' continued close relationship, their use of a network of business entities and
 4 trusts to shield their assets from potential creditors, and the transactions Defendants entered
 5 into with each other through these businesses and trusts.

6 **II. DISCUSSION**

7 Summary judgment is appropriate if the pleadings, the discovery and disclosure
 8 materials on file, and any affidavits show that "there is no genuine dispute as to any
 9 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
 10 56(a), (c). A fact is "material" if it might affect the outcome of a suit, as determined by the
 11 governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An
 12 issue is "genuine" if sufficient evidence exists such that a reasonable fact finder could find
 13 for the non-moving party. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th
 14 Cir. 2002). Initially, the moving party bears the burden of proving there is no genuine issue
 15 of material fact. Leisek v. Brightwood Corp., 278 F.3d 895, 898 (9th Cir. 2002). After the
 16 moving party meets its burden, the burden shifts to the non-moving party to produce
 17 evidence that a genuine issue of material fact remains for trial. Id. The Court views all
 18 evidence in the light most favorable to the non-moving party. Id.

19 Under Nevada law, a transfer is fraudulent if the debtor made the transfer with
 20 "actual intent to hinder, delay or defraud any creditor of the debtor." Nev. Rev. Stat.
 21 § 112.180(1)(a). In determining whether the debtor acted with actual intent, the fact finder
 22 may consider whether the transfer was made to an insider; the debtor retained possession or
 23 control of the property after the transfer; the debtor concealed the transfer; the debtor had
 24 been sued or threatened with suit before making the transfer; the debtor transferred
 25 substantially all his assets; the debtor absconded; and the debtor removed or concealed
 26 assets. Nev. Rev. Stat. § 112.180(2). Additionally, the fact finder may consider whether

1 the value of the consideration the debtor received was reasonably equivalent to the value of
2 the asset transferred; the debtor was insolvent or became insolvent shortly after the transfer;
3 the debtor transferred the asset around the time he incurred a substantial debt; and the
4 debtor transferred the business's essential assets to a lienor who transferred the assets to an
5 insider of the debtor. Id.

6 As a preliminary matter, the Court will not deny the motion for failure to comply
7 with the Local Rules. Although Defendant's motion fails to support nearly all of its factual
8 statements with citations to the record, Defendant's failure is not so egregious as to warrant
9 no consideration of her motion. The consequence of the failure to cite to evidence in
10 support of her motion is the possibility that she will not meet her burden of establishing no
11 genuine issue of fact remains. In turn, the Court rejects Defendant Lisa Rizzolo's
12 contention that Plaintiffs are alleging a conspiracy to violate NUFTA. Plaintiffs' third
13 claim is plainly pled as fraudulent transfers, not as a conspiracy.

14 Viewing the facts in the light most favorable to Plaintiffs, a reasonable jury could
15 find the division of property in the divorce was done with actual intent to hinder, delay, or
16 defraud the Henrys. Although Defendants contend no issue of fact remains because the
17 division of marital property was reasonable given the "undisputed" value of the Crazy
18 Horse Too at the time, Defendants present no evidence to that effect in the initial motion or
19 the joinder thereto. In reply, Defendant Lisa Rizzolo cites to pages 31 to 33 of Kirk
20 Henry's deposition in support. Nowhere in the cited pages does anyone even reference the
21 value of the Crazy Horse Too, much less that it undisputably was over \$30 million.

22 Moreover, genuine issues of fact remain regarding the Crazy Horse Too's value.
23 The Joint Petition itself noted that the value of the Crazy Horse Too was speculative given
24 the Henrys' claim against The Power Company as well as the possibility of criminal fines.
25 Moreover, despite the purported value of the business, Rick Rizzolo was unable to sell the
26 Crazy Horse Too for anything approaching this purportedly "undisputed" value in the year

1 following his plea agreement.

2 Even if the value of the Crazy Horse Too undisputably was \$30 million or more,
3 that would not preclude a reasonable jury from finding that the Rizzolos structured their
4 divorce to defraud, hinder, or delay the Henrys. At the time of their divorce, the Rizzolos
5 did not know the extent of the civil and criminal liability arising out of the operation of the
6 Crazy Horse Too. Rick Rizzolo did not settle with the Henrys and the United States until a
7 year later. Thus, it was not evident in May or June 2005, when the Rizzolos divorced, that
8 \$30 million worth of value in the Crazy Horse Too would cover all liabilities.

9 Viewing the facts in the light most favorable to the Henrys, a reasonable jury
10 could conclude that the Rizzolos structured the division of their assets in their divorce to
11 leave Rick Rizzolo with the Crazy Horse Too, which was the subject of both the Henrys'
12 civil suit and the federal criminal investigation, and put nearly all other assets in Lisa
13 Rizzolo's control in an attempt to shield those assets from creditors, including the Henrys.
14 At the time of the divorce, the Rizzolos knew Rick Rizzolo was under FBI and IRS
15 investigation and that the Henrys asserted a substantial personal injury claim against Rick
16 Rizzolo and The Power Company d/b/a the Crazy Horse Too. Given the parties' post-
17 divorce conduct, a reasonable jury could conclude that Rick Rizzolo retained control of at
18 least some of the assets. After their divorce, Lisa Rizzolo loaned her ex-husband \$600,000
19 despite the fact that he owed her over \$83,000 per month in spousal support, for which he
20 has yet to make a single payment. Lisa Rizzolo made no effort to collect on this obligation
21 until after her failure to do so was pointed out to her in her deposition over four years after
22 the divorce. The fact that the Henrys were aware of the division of assets in the divorce
23 prior to entering into the settlement agreement does not negate the possibility of a jury
24 finding that the Rizzolos acted with the requisite intent.


25 Further, Lisa Rizzolo's motion was directed solely at the divorce, but the Second
26 Amended Complaint alleges transfers beyond the divorce. Consequently, even if the Court

1 were to grant summary judgment in relation to the divorce, the Henrys' NUFTA claim
2 would survive in relation to these other transfers. For example, a reasonable jury could
3 conclude that Rick Rizzolo transferred the \$600,000 to Lisa Rizzolo upon the sale of the
4 Philadelphia club with the actual intent to hinder, delay, or defraud the Henrys. By the time
5 of this transfer, Rick Rizzolo and the United States had been unable to sell the Crazy Horse
6 Too. Upon receipt of \$1 million from the sale of the Philadelphia club, Rick Rizzolo
7 immediately dispersed those funds from his Cook Islands account, including \$600,000 to
8 Lisa Rizzolo to repay what amounted to a zero interest loan from his ex-wife. In discovery
9 in this matter, Rick Rizzolo was deceptive in his discovery responses regarding this
10 account. A reasonable jury could conclude Rick Rizzolo was deceptive because he made
11 the transfer with the intent to conceal his assets and their disposition from creditors,
12 including the Henrys. The Court therefore will deny Defendant Lisa Rizzolo's motion for
13 summary judgment.

14 **III. CONCLUSION**

15 IT IS THEREFORE ORDERED that Defendants Lisa Rizzolo, the Lisa Rizzolo
16 Separate Property Trust, and the LMR Trust's ("Lisa Rizzolo") Motion for Summary
17 Judgment (Doc. #473) is hereby DENIED.

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19 DATED: July 28, 2011

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22 PHILIP M. PRO
United States District Judge